

Awarding a payout to the players holding predetermined winning hands according to the pay table, wherein the third game segment is [selected from the group consisting of] poker[ and gin rummy].

21. (AMENDED) A method of playing a three segment wagering game comprising the steps of:
  - A player placing three wagers to participate in three sequentially played game segments;
  - A dealer dealing a first card to each player and to the dealer and paying the player when a rank of the player's card exceeds a rank of the dealer card;
  - A dealer dealing at least one additional card to each player and the dealer, and paying the player when a combined point total of his hand comprising the first card and the at least one additional card exceeds a point total of the dealer's hand without exceeding 21;
  - A dealer dealing additional cards, if necessary, only to each player to provide at least an amount of cards needed to form a poker-type hand, and wherein the player's hand ranking is compared to a predetermined hierarchy of winning poker-type hands and a payout awarded when the player achieves one of the predetermined winning hands.

#### REMARKS CONCERNING THE AMENDMENTS

The above amendments have been made in an effort to more clearly define the invention and to eliminate (in claim 1) a limitation that was used to restrict among claims. It is believed that claims 1-11 and 21-27 are free of the art and are in condition for allowance. Examination and allowance of the claims is respectfully requested.

#### SUMMARY OF THE REJECTIONS

Claims 21-27 have been rejected under 35 USC 103(a) as unpatentable over Awada in view of Josephs

It is asserted that Awada

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“clearly anticipates all of claim 1 except in that he awards the player for a poker hand higher than that of the dealer. It is old to award a player for a poker holding according to a rank as defined on a pay table as taught by Josephs. To have awarded a player for a poker holding according to a hierarchy of predetermined hands would have been an obvious matter of choice as being old in the art.”

Additional art is cited to show paying for a poker holding according to a table is taught in the art.

**RESPONSE TO THE REJECTION**

The single ground of rejection in this Application, the rejection of claims 21-27 under 35 USC 103(a) essentially asserts that the only difference between Awada and the claimed invention is that in the resolution of the final poker hand, Awada pays according to winning against the dealer and the claimed method pays according to a pay table, without competition against the dealer in that particular game element play. The underlying basis of the rejection is that both game resolution by 1) comparing player and dealer hands and 2) comparing player hands and a pay table are known in the art. As they are essentially equivalent game resolution methods, it would be obvious for one of ordinary skill in the art to substitute the pay table of Josephs for the player versus dealer resolution of Awada. The failure of this rejection resides in at least the following differences between play, and the fact that those differences provide benefits specific to the claimed game methodology that are not recognized in the prior art.

It must be first recollected that all of the claims are directed towards a three segment game play, and not a single segment game play. Each of the steps and difference in steps must be considered within the context of the three game progression. Given this background, it should be noted that structural differences between player versus dealer resolution and pay table resolution include at least:

- a) Eliminating the step of counting dealer cards and adding additional cards, as necessary, to make a six card final poker hand for the dealer, speeding up the game;
- b) pay table awards to players that are potentially significantly higher than awards based on dealer versus player wins, adding more excitement to the game; and
- c) faster resolution of poker payouts because all comparisons are standard in the confines of poker hierarchy, as opposed to having to compare individual hands to dealer hands that change with each game played.

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These are substantive differences, and these differences are not taught by the cited art as beneficial. However, these differences are neither obviously implemented, nor are the benefits of those changes apparent from the teachings of the references, nor are the effects of those benefits on the acceptability of the games obvious from the teachings of the references.

To begin with, no art cited in this rejection shows the cessation of dealing to the dealer after competition in at least two games between the player and dealer, and then continued dealing to the players to complete hands in a non-competitive casino table card game. That in itself is a variation in the manner of play that is not obvious from the teachings of the references. Josephs teaches a complex combining of individual player's Twenty-One hands with the dealer's Twenty-One hand to form a poker hand, so that neither players nor the dealer are dealt additional cards. When more than one player is present, this requires that the various player and dealer hands be distally and conceptually combined (it would be a breach of security to physically combine cards of the dealer and player, then separate dealer and player cards so that dealer cards could be combined with the cards of another player). No additional cards are dealt to either the player or the dealer, and there is no different and separate stage of dealing for a subsequent game. The element of the claim in which cards are continued to be dealt to only the player is not present in either Awada or Josephs. Claims 1 and 21 have been amended accordingly to show that only players receive cards, if necessary, to form a six0card poker hand. That claim limitation, in the context of a continuing series of games, is therefore absent from the teaching of both references and cannot be obvious from the combination of those two references.

In addition to the fact that these structural differences in the play of the game are not obvious from the teaching of the two references used in the rejection, the overall impact of those changes is beneficial beyond any expectation from the teachings in those references.

To support the evidence of the impact of the changes on the value and quality of play of the game represented by the claims in comparison to the game described by Awada, the Declaration of Roger M. Snow under 37 C.F.R. 1.132 accompanies this Amendment and Response. That Declaration provides evidence of the effect of the specific structural changes

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described above on the impact of the game with players and casinos with regard to acceptability and play efficiency and house retention on the play of the game.

Because of the cessation of dealing to the dealer while continuing dealing to the player (not suggested in the prior art in the rejection) and the use of pay tables versus dealer versus player resolution, there was about a 40% increase in rate of play in the game. This is a significant benefit to both the player and the house. With greater play frequency, the house has more games per hour and has the ability to retain more money/time. Because the house has the ability to retain more money/time, it is able to have more flexibility in defining the payout tables, so that higher bonuses can be paid to players while still maintain desired levels of return on the tables to the house (casino). These benefits are not shown or even suggested in the art, and the benefits from the alteration in play from the game illustrated by the Awada Patent and the presently claimed invention were not obvious from the teachings of the references.

In direct comparison between the game designed and marketed by Awada and the game represented by claims 1-11 and 21-27, the Declaration of Roger M. Snow states that because of the change in play from player versus dealer resolution to game table resolution of players' hands, casinos preferred the game of the present application and requested replacement of the Awada-type games with the games of the present invention. This requested exchange was based upon casino manager perceptions of the quality of the games and not according to any marketing efforts according to the Declaration of Roger M. Snow (e.g., see paragraph 14).

It is clear from the differences in the claims of the present invention and the evidence of record that the effects of the structural change in play between the game of Awada and the game recited in claims 1-11 and 21-27 are not obvious, and even if there is a perception that *prima facie* obviousness had been established, the Declaration of Roger M. Snow rebuts that finding, establishing unexpected results over the game of Awada.

The rejection is in error and should be withdrawn. All claims 1-11 and 21-27 should be allowed.

A fee calculation sheet is enclosed. Please charge any deficiency, or credit any overpayment to deposit account 50-1391.

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Respectfully submitted,

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